

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**ADVANCED MARKETING SYSTEMS, §
LLC §
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v. §
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CVS PHARMACY, INC., *et al.* §
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**CIVIL ACTION NO. 6:15-CV-134
LEAD CASE**

ORDER

The parties in this case appeared for a Scheduling Conference on July 30, 2015. Days later, on August 4, 2015, Defendants CVS Pharmacy, Inc., Walgreen Co., and Brookshire Grocery Company filed an Unopposed Motion to Stay Discovery and Continue All Deadlines Pending Resolution of Statutory Subject Matter Issues (ECF 24). Defendants did not request a stay or raise the issue at the Scheduling Conference when the Court discussed deadlines in the case.

In their motion to stay, Defendants sought a stay of discovery and all deadlines on the basis that a letter brief was filed on July 23, 2015 requesting permission to file a Motion for Judgment on the Pleadings for invalidity of the patents in suit under 35 U.S.C. § 101. Defendants asserted that a stay of this case pending resolution of the § 101 issues would avoid unnecessary expense and resources.¹ The Court granted the parties' request to file a Motion for Judgment on the Pleadings, but noting that the motion had not yet even been filed, the Court denied the motion to stay.

¹ A stay is not justified merely because a party desires to save money. Though the Court always strives to avoid wasting the Court and the parties' resources, that desire must be balanced with a credible showing that the dispositive motion is likely to succeed such that any intervening discovery would be wasted if and when the case is disposed of on motion.

Two weeks have passed and Defendants still have not filed their motion for judgment on the pleadings. Instead, Defendant Brookshire Grocery Company (“BGC”) filed Objections to Magistrate Judge’s Order Regarding Stay (ECF 60). BGC argues that staying the case pending resolution of its dispositive motion will conserve resources because its motion has a high probability of success on the merits. At this stage, however, the Court only has the benefit of a letter brief because BGC has not filed its motion for judgment on the pleadings. Though Defendants assert that the Court’s denial of the stay for this reason puts form over substance, a letter brief is merely a truncated preview of the dispositive motion. It does not present the full scope of the argument.

It is therefore

ORDERED that Defendants shall file their motion for judgment on the pleadings, referred to in the Order filed on August 19, 2015 (ECF 36), **within 5 days** of entry of this Order. After the motion is filed and all parties have had an opportunity to brief the issues raised, the Court will re-evaluate Defendants’ request to stay the case.

So ORDERED and SIGNED this 3rd day of September, 2015.



K. NICOLE MITCHELL
UNITED STATES MAGISTRATE JUDGE